

REMARKS

Claims 1-39 were examined. Applicant has amended claims 1 and 30. No claims are cancelled or are newly presented. No new matter has been introduced.

Rejections under 35 USC §112

Claims 2, 3 and 14 stand rejected under §112, first paragraph, as failing to comply with the written description requirement. In particular the examiner states that the closest disclosure of steps [0224] does not support pre-positioning in an aesthetic configuration since it "further assist the movement".

Applicants submit that support for pre-positioning in an aesthetic configuration can be found in paragraph [0237] of the instant specification which clearly states: vectored pre-positioning of the selected tissues can be used to shape the thermal lesion so as to create or facilitate the creation of a directed wound healing response. To this end, a number of surgical techniques can be employed, including but not limited to, pre-positioning the selected tissue by hand, suturing the tissue in place, using a steri strip, using a surgical/tissue adhesive, or using a surgical clamping device known in the art.

Regarding claim 14, the examiner asserts that a separate surgical tool is disclosed [0224], but a skin tensioning device is not disclosed separate from the probe (it is disclosed as coupled). Additionally, the disclosure of substantially parallel is also associated with the probe.

Applicants submit that a separate skin tensioning device is disclosed in paragraph [0222] of the instant specification, which states:

In other embodiments forces 120 and 130 can be applied separately by applying compressive forces by the probe and manually pulling the skin in a horizontal plane. Pulling can be done using the opposite hand of the practitioner or alternatively, the pulling of the skin can be done with the

assistance of another practitioner or using a surgical instrument or retraction instrument or device known in the art.

Applicants therefore maintain that the instant claims meet the written description requirements under §112, first paragraph. Accordingly, withdrawal of the rejection is respectfully requested.

Double Patenting Rejection

Claims 1-3, 8, 10-22, 24-26 and 30 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 7 and 17 of US 6,470,216.

Applicants respectfully disagree and maintain that claims 1 and 30 of the instant application recite "pre-positioning tissue at the tissue site into an aesthetically corrected configuration." Claims 1, 7 and 17 of US Patent 6,470,216 (the '216 patent) do not recite such a limitation. Also, claim 30 recited additional limitations not found in claims 1, 7 and 17 of the '216 patent. The Examiner specifically asserts that the '216 patent "states 'smooth' which is an aesthetical configuration, the conformer is applied and a positive mechanical force is applied (pre-positioning) and the smooth skin surface is deforming the collagen prior to delivery. Without acquiescing to the examiner's position and solely for the purpose of expediting the prosecution of the present application, Applicants have amended claims 1 and 30 to incorporate an additional limitation that clearly distinguishes the conflicting claims. The limitation recites "wherein pre-positioning of the selected tissues can be used to shape a thermal lesion so as to create or facilitate the creation of a directed wound healing response." Support for the incorporated subject matter can be found at least in paragraph [0237] of the instant specification. Accordingly, withdrawal of the rejection is respectfully requested.

Rejections under 35 USC §102

Claims 1-11, 14-24, 26-29, 31-39 stand rejected under §102(b) as being anticipated by Knowlton (6,350,276).

Applicants respectfully disagree and traverse the rejection.

For the reasons previously outlined in the Response to the Office Action filed on June 21, 2006, Applicants maintain that Knowlton (the '276 patent) does not anticipate the instant application.

Applicants submit that a rejection under 35 U.S.C. §102 can only be proper if the cited reference recites every element of the rejected claims. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Further, *In re Bond* (910 F.2d 831,832 (Fed. Cir. 1990)) states that anticipation under 35 U.S.C. § 102 requires "every element of the claimed invention be identically shown in a single reference."

Claim 1 and 30 of the present application has been amended to include the limitation "pre-positioning tissue at the tissue into an aesthetically corrected configuration; wherein pre-positioning of the selected tissues can be used to shape a thermal lesion so as to create or facilitate the creation of a directed wound healing response." The '276 patent does not disclose or teach pre-positioning of tissue to shape a thermal lesion.

Rejections under 35 USC §103

Claims 12-13, 25 and 30 stand rejected under §102(a) CHRIS – as anticipated by or, in the alternative, under §103(a) as obvious over Knowlton. Knowlton does not disclose each and every limitation of Claims 1 or 30, or those claims dependent thereupon, because Knowlton does not disclose pre-positioning of tissue to shape a thermal lesion. Accordingly, since the instant claims are not anticipated nor obvious over Knowlton, Applicants respectfully request withdrawal of the present rejection.

CONCLUSION

Applicant believes that the application is in condition for allowance. The Commissioner is authorized to charge Deposit Account 08-1641 for any payment due in connection with this paper, including petition fees and extension of time fees.

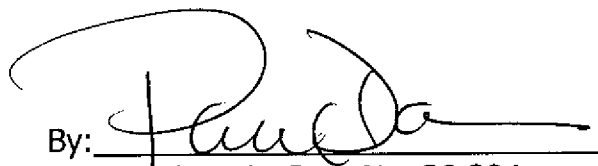
Respectfully submitted,

HELLER EHRMAN LLP

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9/18/2007

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